

REMARKS

This application is a Request for Continued Examination under 37 C.F.R. § 1.114(d). A timely notice of appeal was filed July 21, 2005, and an appeal brief was due to be filed on October 23, 2005. The RCE and this accompanying Preliminary Amendment are filed in lieu of the appeal.

During the telephone interview with the undersigned on June 8, 2005, the Examiner indicated that she might be favorably inclined to allow claims that included subject matter directed to the “methods used to propagate content load over the time period” (Interview Summary). To that end, dependent claims 53-54 are presented herewith for the Examiner’s consideration. These claims describe one embodiment of the “given function” and are believed to be in condition for prompt allowance given the Examiner’s past statements.

As to independent claims 46, the Examiner admits – correctly, as it were -- that the Pipkins prior art does not teach either steps (c), (d) or (e), yet obviousness is still alleged. A similar argument is made with respect to independent claim 51.

The gist of the Examiner’s rejection is that:

“... it would have been obvious [] to utilize factors such as worker availability and average handling time, as well as take into consideration service level goals to distribute the forecasted email load over a time period such as a workday, in order to efficiently respond to each email received. The efficient method of allocating the emails across the work day, depending on worker availability and average handling time, would ensure overstaffing or understaffing will not occur which will lead to inferior service and customer dissatisfaction.”

The Examiner’s position misses an important point. Claim 46 and claim 51 describe specific steps or elements that are used (in the Examiner’s words) to distribute “forecasted [contact] load over a time period such as a workday.” Obviousness is determined by looking at the claimed subject matter “as a whole,” and not some shorthand or summary of that subject matter. With respect to claim 46, the three (3) limitations (in steps (c)-(e)) are specific steps that are part of the subject matter “as a whole,” and these steps are neither disclosed nor suggested by the alleged modification to Pipkins that

underlies the Examiner's argument. For this reason, claim 46 is patentable over the cited art, as is independent claim 51.

To further advance this prosecution, each of independent claims 46 and 51 has been amended to clarify further that as a result of applying the given function, "a percentage of the contact load for the given future time period is allocated into each time period of the given set of the identified number of time periods." Even if the Examiner's rationale regarding the Pipkins art were correct, this additional subject matter would not be suggested by any possible modification of Pipkins absent a hindsight reconstruction of the claimed invention, which is impermissible.

The Request For Continued Examination is accompanied by the \$790.00 filing fee. In addition, a two (2) month extension of time in the amount of \$450.00 is submitted to extend the period for response from the final rejection up to and including November 15, 2005.

An Information Disclosure Statement identifying a newly-issued patent accompanies this response.

A Notice of Allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "David H. Judson", with a long horizontal line extending to the right.

By: _____

David H. Judson, Reg. No. 30,467

ATTORNEY FOR APPLICANTS